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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/813,449

03/30/2004

Enrique J. Klein

16497.28.1

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57360

7590

02/03/2009

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EXAMINER

DOWE, KATHERINE MARIE

ART UNIT

PAPER NUMBER

3734

MAIL DATE

DELIVERY MODE

02/03/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/813,449	<b>Applicant(s)</b> KLEIN ET AL.	
	<b>Examiner</b> KATHERINE M. DOWE	<b>Art Unit</b> 3734	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 November 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,5-14,16-20,23 and 24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,5-14,16-20,23 and 24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>11/14/2008</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/14/2008 has been entered.
2. Claims 1, 2, 5-14, 16-20, 23, and 24.

### ***Claim Rejections - 35 USC § 112***

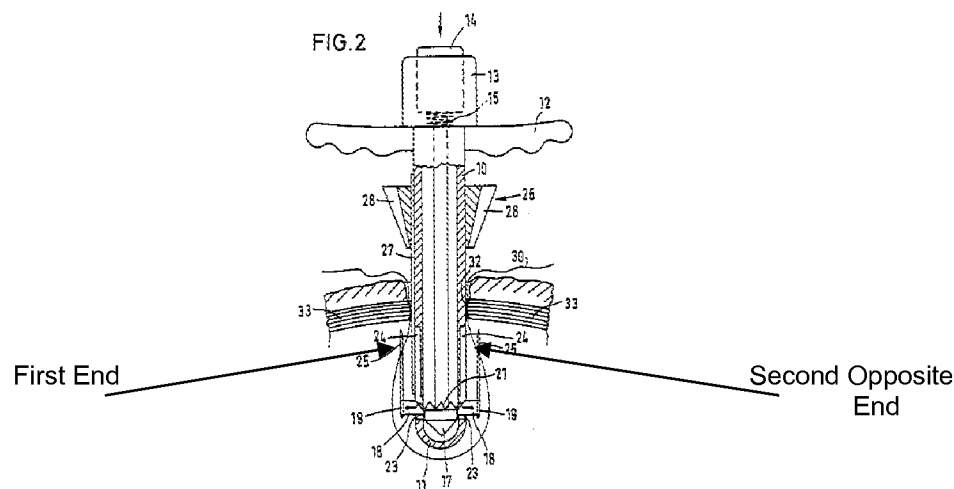
3. The amendment to claims 5 and 6 are acknowledged. Accordingly, the rejections of the claims under 35 U.S.C. 112, second paragraph, as being indefinite are withdrawn.
4. The following is a quotation of the second paragraph of 35 U.S.C. 112:  

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
5. Claim 1 recites the limitation "the vessel" in line 3. There is insufficient antecedent basis for this limitation in the claim.
6. Claim 24 recites the limitation "the vessel" in line 5. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. Claims 1, 2, 5-14, 16-20, 23, and 24 are rejected under 35 U.S.C. 102(e) as being anticipated by Heidmueller (US 5,320,632). Heidmueller discloses a method for suturing tissue in the proximity of an aperture in a tissue wall comprising advancing a shaft (10) through the aperture (32) so that a pair of needles (25) is advanced from a distal side (Fig 2) of the tissue wall (33) to form a pair of ports with in the tissue wall on opposite sides of the aperture. Opposite ends of a length of suture are positioned within the vessel (see annotated Figure 2 below). At least a portion of suture (30) is passed from the distal side of the tissue wall proximally through the ports in the tissue wall (Figs 2-5; col 4, ln 14-18). A loop is formed with the remaining portion of suture to secure the suture (col 5, ln 3-4). The pair of needles may carry the suture portion therebetween as a continuous length (col 3, ln 65-67).



***Response to Arguments***

9. Applicant's arguments filed 11/14/2008 have been fully considered but they are not persuasive.

10. Applicant argues Heidmueller does not teach the limitation: "positioning opposite ends of a length of suture within the vessel". The Examiner respectfully traverses the Applicant's remarks. The Examiner acknowledges the distal most ends of the entire suture of Heidmueller appear to be disposed outside of the incision. However, the Examiner notes the "length of suture" is not defined in the claims and may be interpreted as a length of the suture within the vessel or tissue portion. Thus, inherently, ends of the length of suture defined as such would be disposed within the vessel or tissue portion. Alternatively, the Examiner notes the "ends of a length of suture" may be interpreted as end portions, compared to the center point of the suture, and not necessarily the distal most ends. Again, interpreted as such Heidmueller clearly shows opposite end portions within the vessel or tissue portion as shown in annotated Figure 2 above.

11. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the distal most ends of the entire suture positioned within the vessel) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

***Conclusion***

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to KATHERINE M. DOWE whose telephone number is (571)272-3201. The examiner can normally be reached on M-F 8:30am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571) 272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kevin T. Truong/  
Primary Examiner, Art Unit 3734

Katherine Dowe  
January 28, 2009

/K. M. D./  
Examiner, Art Unit 3734